

MEMO ENDORSED

Sept. 29, 2020

The Honorable Katherine Polk Failla
United States District Judge
Southern District Of New York
40 Foley Square
NY, NY 10007

Re: Sines et al v. Yiannopoulos

Dear Judge Failla:

I respectfully write as a member of the public and reporter for the New York Daily News covering the case of Sines et al v. Yiannopoulos, 20-mc-241. I write in response to your Sept. 2, 2020 order (docket entry 16) sealing the entirety of the respondent's letter. Your Honor also sealed the entirety of the movant's reply on Sept. 9, 2020 (docket entry 21).

As you are aware, there exists a presumption of access to court proceedings and judicial documents under both the common law and our Constitution. This presumption is overcome solely when Your Honor makes a specific finding on the record that a compelling interest in secrecy overrides this interest. Any restrictions of access must be narrowly tailored.

Mr. Yiannopoulos discussed his interactions with the FBI in detail on the record during a July 29, 2020 telephone conference. Your Honor also expressed skepticism at that hearing about whether any journalistic privilege would apply to the material at issue.

"I'm hearing you today to say the privilege you wish to assert as to the identification of the source. Because you've already told us about the materials, you just simply don't have them," Your Honor stated on page 49 of the transcript.

There is significant public interest in the FBI's investigations of white supremacists. Ongoing protests around the country are devoted, at least in part, to dismantling white supremacy. Just this week, the acting Department of Homeland Security called white supremacy the "most persistent and lethal threat" internally to the United States. If the FBI is in contact with Yiannopoulos about one of the country's most notorious white supremacists, Richard Spencer, that is of public interest.

The presumption of access is based on the view that secrecy erodes trust in courts and judges, and access enhances trust. To keep these materials sealed would create the appearance that the presumption is designed to avoid -- that the Court is keeping a matter of public concern under wraps.

I ask that you consider unsealing the aforementioned documents, or at minimum redacting only the portions Your Honor considers of "a sensitive nature."

Thank you for your attention.

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The Clerk of Court is directed to file this letter to the docket in case number 20-mc-241. The parties shall file a response, if any, to this letter seeking to unseal certain filings on or by October 1, 2020.

Dated: September 24, 2020
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

A copy of this Order was mailed by Chambers to:

m@milo.net